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6	UNITED STATES DISTRICT COURT
7	DISTRICT OF NEVADA
8	
9	LAWRENCE SCHWIGER,)
10	Petitioner,) 3:07-cv-00382-LRH-RAM
11	VS.
12	JACK PALMER, et al.,
13	Respondents.
14	/
15	This is a closed action, the subject of which was a petition for writ of habeas corpus pursuant
16	to 28 U.S.C. § 2254. Presently before the Court is petitioner's application for a certificate of
17	appealability. (ECF No. 27). Respondents have opposed the application. (ECF No. 28).
18	In order to proceed with his appeal, petitioner must receive a certificate of appealability. 28
19	U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; Allen v. Ornoski, 435 F.3d 946, 950-951
20	(9th Cir. 2006); see also United States v. Mikels, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a
21	petitioner must make "a substantial showing of the denial of a constitutional right" to warrant a
22	certificate of appealability. Id.; 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84
23	(2000). "The petitioner must demonstrate that reasonable jurists would find the district court's
24	assessment of the constitutional claims debatable or wrong." <i>Id.</i> (quoting Slack, 529 U.S. at 484). In
25	order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
26	debatable among jurists of reason; that a court could resolve the issues differently; or that the
27	questions are adequate to deserve encouragement to proceed further. <i>Id</i> .
28	By order filed May 22, 2008, this Court dismissed the petition, without prejudice, for failure

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1	to exhaust all grounds for relief in state court. (ECF No. 11). Judgment was entered on May 22,
2	2008. (ECF No. 12). By order filed February 7, 2011, this Court denied petitioner's motion to
3	vacate judgment pursuant to Fed. R. Civ. P. 60(b) and re-open this action. (ECF No. 25). To
4	exhaust a claim, petitioner must have "fairly presented" that specific claim to the Supreme Court of
5	Nevada. See Picard v. Conner, 404 U.S. 270, 275-76 (1971); Schwartzmiller v. Gardner, 752
6	F.2d 1341, 1344 (9th Cir. 1984). Petitioner admitted, in pleadings to this Court, that motions and
7	appeals related to the conviction challenged in the instant federal habeas proceeding were still
8	pending in state court, as review had not concluded. (ECF Nos. 6 & 7). The Court's dismissal of
9	this action without prejudice was proper. Moreover, the denial of petitioner's October 6, 2010
10	motion to vacate judgment and reopen this action was proper. (ECF No. 25). The Court further
11	notes that petitioner has filed another federal habeas action in this Court at case number 3:09-cv-
12	00454-LRH-VPC. No reasonable jurist could conclude that the Court's orders were in error.
13	Petitioner is not entitled to a certificate of appealability.
14	IT IS THEREFORE ORDERED that petitioner's application for a certificate of
15	appealability (ECF No. 27) is DENIED .
16	IT IS FURTHER ORDERED that the Clerk shall send a copy of this order to the United
17	States Court of Appeals for the Ninth Circuit.
18	Dated this 22nd day of July, 2011.
19	X (Maha

LARRY R. HICKS UNITED STATES DISTRICT JUDGE